



**DON GAETZ**  
*President of the Senate*

J.R. Kelly  
*Public Counsel*

**STATE OF FLORIDA**  
**OFFICE OF PUBLIC COUNSEL**

c/o THE FLORIDA LEGISLATURE  
111 WEST MADISON ST.  
ROOM 812  
TALLAHASSEE, FLORIDA 32399-1400  
1-800-342-0222

EMAIL: OPC\_WEBSITE@LEG.STATE.FL.US  
WWW.FLORIDAOPC.GOV



**WILL WEATHERFORD**  
*Speaker of the House of Representatives*

May 16, 2013

RECEIVED-FPSC  
13 MAY 17 AM 9:04  
COMMISSION  
CLERK

Clarence Prestwood  
Cheryl Bulecza-Banks  
Melinda Watts  
Marshall Willis  
Martha Barrera  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Re: Docket No. 130024-EI** – Petition for expedited approval of asset optimization incentive mechanism, by Tampa Electric Company

Dear Clarence, Cheryl, Melinda, Marshall, and Martha:

In the above docket, Tampa Electric Company (“TECO”) is seeking approval of an incentive program modeled after the pilot program that the Commission approved as one component of a settlement package in Docket No. 120015-EI. (The final order in that docket is on appeal.)

The Commission has indicated its intent to process TECO’s petition using the Proposed Agency Action (PAA) procedure. While the Office of Public Counsel (“OPC”) has intervened in the docket, the Commission’s current policy prohibits formal discovery by Intervenors prior to the issuance of the PAA order. In light of that policy (the appropriateness and legality of which we continue to dispute), and of the Commission’s decision to defer the matter until the Agenda Conference scheduled for June 25, 2013 (which provides time and opportunity to

DOCUMENT NUMBER-DATE  
02716 MAY 17 2013  
FPSC-COMMISSION CLERK

provide input in greater detail), OPC is using this letter to express some of its most serious concerns to the Commission Staff early in the development of the case. OPC hopes that, by raising the concerns now, we may facilitate streamlining the case. This approach is similar to that which OPC has used in other PAA dockets. To be clear, by identifying particular aspects of the petition that OPC regards as problematic, OPC does not waive or modify the fundamental, policy-based opposition to TECO's proposal that we expressed during the April 25, 2013 Agenda Conference. OPC reserves the right to protest any PAA order that proposes to approve TECO's petition on any grounds.

During the Agenda Conference, OPC expressed its opposition to the inclusion of economy power purchases as part of TECO's request. OPC will not duplicate all of its remarks from that day in this letter; however, OPC continues to oppose this aspect of TECO's petition.

The first concern that OPC wishes to raise now is the extent to which TECO's proposal, if approved in its requested form, would undermine a tenet that has been a fundamental underpinning of the Commission's policy of permitting regulated electric utilities to recover fuel costs through a separate cost recovery clause. Over time, investor-owned utilities and the Commission have stressed to customers (and the public generally) that utilities do not make a profit on the fuel that they purchase; rather, by way of the fuel cost recovery clause, fuel costs are passed through to customers directly, on a dollar-for-dollar basis. OPC believes that this premise is important to the customers' acceptance of and confidence in the process that underlies a large component of the bills that customers pay.

Over time, the Commission has allowed utilities to include certain capital items that involve the calculation of a return on capital investment within their fuel clauses. The Commission has also permitted utilities to retain a portion of gains made on sales of electrical *power*, and to receive a reward (in the case of the "Generating Performance Incentive Factor") for reducing the *quantity* of fuel necessary to meet customers' requirements. Whether one agrees or disagrees with them, these exceptions to a "pure" fuel cost recovery clause have not "undone" the core proposition that the utility does not "mark up" the fuel *commodity* that it purchases. Even temporary leases of idle transmission capacity or excess gas transportation rights, which TECO nominates as candidates for its "asset



optimization” program, would not disturb the longstanding policy of this state that a utility does not make a profit on the fuel *commodity* that it purchases.

Currently, utilities treat any revenues received from the sale of the fuel *commodity* as a credit to fuel expense in the calculation of the fuel cost recovery factor. This is not only entirely appropriate, but is also consistent with the maxim that the utility does not profit from fuel purchases. However, the proposal to retain a portion of profits from the sale of the fuel *commodity*, whether natural gas or “solid fuel” (coal or petroleum coke, to use the examples that TECO included in its response to Staff data requests), would violate the basic tenet. If the Commission were to approve this aspect of TECO’s petition, then the Commission could no longer validly say to customers that utilities do not receive a profit on the fuel commodities that they purchase.<sup>1</sup> If the Commission decides to entertain a second program while FPL’s pilot program is in progress, the Commission should, at a minimum, filter out those aspects of the request that are inimical to fundamental regulatory precepts. In doing so, the Commission would also avoid creating a perverse incentive to fashion the timing and quantities of fuel purchases in a manner that would position the utility to maximize profits from commodity sales – something that would be difficult to identify and police through post-purchase regulatory review.

The second point that OPC wishes to raise now, in the hope that it can be addressed prior to June 25, 2013, is TECO’s desire for the ability to: (1) create new program components in the middle of an annual fuel cycle; (2) identify these components in its final true-up package; and (3) present both the components and claimed bonuses for an after-the-fact “confirmation.” TECO’s proposal comes very close to asking the Commission to delegate its authority to the utility or, at least, to creating a presumption that its new idea is “in” the approved program unless and until the Commission later determines that it is “out.” TECO’s suggested timing would place parties who wish to exercise discovery rights and object to a particular proposal at a procedural disadvantage. More fundamentally,

---

<sup>1</sup> OPC observes that, in its petition, TECO does not expressly exclude the possibility of “solid fuel” purchasing or transportation measures that would apply to fuel delivered to and burned in its generators to serve native load. OPC encourages the Staff to explore this aspect through discovery prior to the June 25, 2013 Agenda Conference.

May 16, 2013

Page 4

any implementation of new or additional components that increase customers' bills should occur only after the Commission has approved them, so that customers can be informed of the basis for their bills *before* the "meter begins to run."

Finally, the discussion during the April 25, 2013 Agenda Conference established not only that TECO selectively ignored several years of data that, if included, would have led it to propose higher thresholds, but also that TECO included anticipated bonuses from the controversial inclusion of economy purchases when establishing its proposed thresholds. These considerations lead OPC to be skeptical of TECO's claim that it fashioned "stretch goals." OPC encourages the Staff to evaluate the appropriateness of TECO's proposed thresholds in this light.

As the Commissioners have acknowledged, they were not in a procedural posture that was conducive to reforming particulars of the incentive program that was presented to them as part of a proposed settlement package in Docket No. 120015-EI. However, that is not the case with TECO's proposal. While OPC remains opposed to the program in its entirety on grounds of economic theory and regulatory policy, OPC encourages the Staff to consider the specific concerns identified in this letter prior to formulating its recommendation.

Yours truly,



Patty Christensen  
Joseph A. McGlothlin

cc: James D. Beasley  
Ann Cole, Commission Clerk